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Supreme Court, U.S.
FILED

No. 081362 MAR 2 - 2009

OFFICE OF THE CLERK

In The

Supreme Court of the United States

KAMALJIT SINGH BADWAL,

Petitioner,

vs.

TEAMSTERS UNION LOCAL NO. 922, As Representatives for the Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals, Fourth Circuit Court

PETITION FOR WRIT OF CERTIORARI

KAMALJIT SINGH BADWAL*
8520 Silverdale Road
Lorton, VA 22079-3067
(703) 690-2343
*Indigent Petitioner, Pro Se

QUESTIONS PRESENTED FOR REVIEW

It is asked of the Court to please review the decisions of what the previous lower courts failed to address.

1. The basic question as to why TEAMSTER OFFICIALS as well as Aero-Link management were unaccountable and negligent in their duties as to professionally relay vital information and documentation to employee. Employee submitted all requested documents in timely fashion to Defendants. Employee, in good faith presented sound documentation and statements to support and defend his case, good name, and reputation against defamatory allegations. Petitioner's employer repeatedly attempted to submit invalid evidence that would justify reasons for his termination. Union officers repeatedly failed to represent and defend employee in good faith from said erroneous and unfounded allegations.

2. Aero-Link and the TEAMSTERS refusal to respond to repeated requests for information requested by the Petitioner regarding his case; either verbally or written, forced the petitioner with no other known recourse but to seek external legal counsel as to continue his case in an unbiased manner. Petitioner is accused of being time-barred in his response time to the Defense, though he was forced to wait 111 days for Ms. Buie to respond to his repeated requests regarding information on his case proceedings.

QUESTIONS PRESENTED FOR REVIEW – Continued

The response was received only after the non-union attorney requested in writing to Ms. Buie to inform his client of the status of the case. (*Attorney Roy Tesler from TESLER & WERBLOOD retained*). Petitioner also waited for over 96 days for a response from the (NLRB) that also greatly delayed his response time to submit his argument to the Courts.

3. Petitioner again begs the Court to reexamine these allegations by the Defense of his being time-barred and also how he was denied his rights to proper due process during his grievance proceedings by either Union or Aero-Link authorities. Multiple undocumented and unsubstantiated occurrences have been submitted against the Petitioner by the Defense without solid proof of his wrongdoing.

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PETITION FOR WRIT OF CERTIORARI

This is an application for a writ of certiorari to review an order of the superior court, where the indigent Petitioner asserts his constitutional rights which were denied under the *Weingarten Rights of 1975, NLRB v. J. Weingarten, Inc.* It is requested that the Petitioner be furnished with a complete statement of the facts, at union expense, in association with his appeal from unwarranted and unsupported punitive actions that ultimately lead to his termination from Aero-Link Transportation Services, Inc. as represented by the INTERNATIONAL BROTHERHOOD of TEAMSTERS UNION LOCAL No. 922, Ronald Reagan Washington National Airport, Washington, DC, March 2007.

Petitioner, Kamaljit Singh Badwal, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS AND ORDERS BELOW

The opinion of the Fourth Circuit Court of Appeals is reported at App. 1.

The opinion of the United States Court of Appeals for the Fourth Circuit Court (App. 1) failed to address this topic and denied the Petitioner this right to appeal his alleged time-barred status.

The United States Court of Appeals for the Fourth Circuit Court (App. 3) also failed to fully

recognize and address this issue and persisted in only repeating the Defenses' issue of being time-barred during the process even after repeated requests from the Petitioner.

The District Court Order is reported at App. 7.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit Court ruled Petitioner's case on December 19, 2008. Petitioner timely filed a petition for certiorari and motion to proceed dated March 2, 2009 with the United States Supreme Court clerk's office. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

Petitioner requests the Supreme Court to review case and address these issues that were denied by the United States District Court Eastern District of Virginia, Alexandria Division on August 5, 2008. Refer to *Weingarten Rights, NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 88 LRRM 2689 (1975).

STATEMENT OF THE CASE

Petitioner faithfully worked for Aero-Link Transportation Services at Ronald Reagan Washington National Airport providing customer service as a parking garage attendant and cashier for 23 years. He was a highly respected senior agent with the

company who had received numerous commendations and praise for his superior customer service and dedication.

The Petitioner stated that Ms. Buie, the local union representative, breached her duty to provide fair and unbiased representation in processing his grievance related to his employment termination. The union moved to dismiss Petitioner's amended complaint on grounds that the action was initiated outside of the six-month statute of limitations found in section 10(b) of the National Labor Relations Act (NLRA). They also accuse that Petitioner failed to exhaust all known available internal union remedies and his actions were time-barred as required by the International Brotherhood of Teamsters Constitution.

Union Representatives' lack of knowledge and experience to properly instruct, defend, and educate the plaintiff throughout his grievance and arbitration process clearly misled the Petitioner. Petitioner again states that union officials withheld the critical information from him and failed to fairly represent the Petitioner.

Realizing that union officials had failed to represent Petitioner in an unbiased manner, the Petitioner had no alternative or recourse but to do whatever he could to defend his name and reputation.

Union has stated that Petitioner failed to exhaust all documented internal union remedies as outlined in the collective bargaining agreement and that this in itself is a breach of duty.

This documented information has never been presented to the Petitioner and it is unknown where exactly these words are written in the collective bargaining agreement.

As you may know, Virginia law requires that reasonable notice be given to an employee prior to termination (*Slade v Central Fidelity Bank,* 12 Va. Cir. 291 (Lynchburg Cir. Ct. 1988); *Laudenslager v. Loral,* 39 Va. Cir. 228 (Chesapeake City Cir. Ct. 1996), *Tingle v. Chasen's Business Interiors, Inc.*, Law No. 96-4299 (Norfolk Cir. Ct. 1997)).

NOTE: Excerpt from COLLECTIVE BARGAINING AGREEMENT between AERO-LINK and INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 922, Page 10 ARTICLE VIII, ARBITRATION AND GRIEVANCE PROCEDURE

SECTION 1 – GRIEVANCE PROCEDURE

"Every effort shall be made to adjust controversies and disagreements in an amicable manner between the Employer and the Union. In the event that any grievance cannot be settled in this manner, the question may be submitted by either party for arbitration as hereinafter provided."

"Should any grievance, dispute, or complaint arise over the interpretation or application of the contents of this Agreement, there shall be an earnest effort on the part of the parties to settle promptly, through the following steps."

STEP 1: "All grievance or disputes must be written and signed by the aggrieved employee or Union and submitted to the employee's supervisor with in five (5) working days from the time the grievance rose and/or the Union or employee had knowledge of the grievance." Employee submitted documents to union shop steward within the allotted period to submit to Aero-Link management in a timely manner.

Unbeknownst to employee, the union steward failed to submit his documents as required within the (5) day working window.

STEP 2: "By conference between the aggrieved and the shop steward, and the employee's supervisor."

During employee's initial conference with union steward and Aero-Link managers, employee was instructed to remain silent while the steward debated the alleged infractions with employer to no avail.

STEP 3: "By conference between the official or officials of the union and the manager or representative" Petitioner made every attempt to reconcile dispute with union and Aero-Link officials and was lead to clearly believe that case had been dismissed and ignored before resorting to retaining outside non-union counsel.

Again, the Petitioner requests the Court to address this critical issue. If a person is unaware of his rights and is not advised of those rights by Officials paid to represent, defend, educate, and instruct

him, then where should he go to protect himself against the injustices?

STEP 4: "In the event the last step fails to settle the grievance, either party within fifteen (15) working days from the date the grievance was heard in STEP 3, send a written request for a panel of arbitrators from the Federal Mediation & Conciliation Service. The requesting parts shall simultaneously serve on the others party a copy of the request for arbitration."

"The parties shall select from this panel a single arbitrator, in accordance with the procedure prescribed by the Federal Mediation & Conciliation Service. The arbitrator shall then proceed to hear and determine the case submitted to him or her."

"All grievances not processed in accordance with the time limits proscribed in this Article shall be deemed waived. Extensions of said time limits may be accomplished only in writing, mutually agreed to and signed by both parties."

Petitioner again states at this point he was denied arbitration hearing by the union for the only known documented reason, that "THE UNION" could not represent him "IN GOOD FAITH."

For this reason above all others, the Petitioner pursued his case outside union reach so that he may attempt to be represented in an unbiased manner.

The following arguments support the Petitioner in his claims that unconstitutional actions by Teamster Union Local No. 922 officials and by prior court decisions are as follows:

The question remains whether the Petitioner was in fact time barred in responding to the court as previously stated by the Defense. The Petitioner filed all documented responses in the proper time limitations with the courts. When Petitioner initially filed claim with the NLRB, it took them (NLRB) 6 months to return a reply to him. The Petitioner's 90-day window of time to respond further with his case should have therefore begun only once the documented response was returned from the NLRB on Nov. 27, 2007 and not July 24, 2007 as previously stated by the defense.

Defense claims the Petitioner violated union policy by seeking non-union legal representation to proceed with his case. The union claims Petitioner failed to exhaust all internal union remedies. Petitioner made every possible attempt to submit his case through known proper union channels but was subjected to deliberate and unfair acts and potential discriminatory reactions from the union officials. Because the Petitioner was refused the same ethical respect in continuing his case by union, was forced to seek non-union legal counsel elsewhere to continue in an unbiased manner.

The legal defense team representing the union "twisted" the Petitioner's words as "a refusal on his part" not to use their internal remedies.

However, the Fourth Circuit Court dismissed the case and did not recognize that the Pro Se Indigent Petitioner was within his rights and jurisdiction to expose the cavalier and indifferent tactics the Teamster Union Officials pursued in their failure to represent the Petitioner in good faith from such unprofessional and discriminatory actions. Teamster Union Officers mishandled and withheld Petitioner's documentation relevant to his defense. Union misled and misinformed Petitioner by failing to submit essential documentation within allotted time parameters.

The Fourth Circuit ignored accountability on the part of the Teamster Representative to accurately follow the binding protocol agreement of the union Bylaws.

Documentation by Aero-Link Management alleged violations on the part of the Petitioner that were later "knowingly altered" with inaccurate information after employee had previously been counseled and signed; e.g., Ms. Buie claims that Petitioner was found sleeping while on duty, but it went unreported to Management.

No prior known documentation was submitted as to whether Ms. Buie actually instituted a fact-finding investigation of this incident with co-workers before presenting this alleged infraction into the employee's file. Teamster Union Officials failed unquestionably

to properly and thoroughly coach and instruct Petitioner as to defend himself from said accusations regarding his performance and character as well as to question management on altered documentation that the defense submitted against him.

Employee had no prior knowledge of proper Grievance Rules and Processes as outlined in the Collective Bargaining Agreement Union Bylaws Handbook. The employee has previously stated that this critical information, vital knowledge; was withheld from him until he was well into disciplinary discussions with Ms. Buie.

Harassing and unfounded allegations from Aero-Link management of Petitioner having an alleged altercation on camera with a customer has also been used in a veiled attempt to incriminate the Petitioner into admitting additional wrongdoing. Facts of this incident have yet to be submitted as proof of evidence to the employee, yet were used as part of his termination process.

Employee was unjustly relieved of duty for unjust, undocumented, and biased infractions. Petitioner seeks review of an order against him that will clearly address this unfavorable practice and blind representation by union officers in representing the Petitioner in good faith throughout his case.

Petitioner has been refrained from Teamster Union Local No. 922 officials regarding disclosure of copies from his Arbitration hearing. Petitioner asks on what grounds was his Arbitration hearing denied

and why? Why was Petitioner also denied credible reasons for an appeal?

No information or documentation was been given to Petitioner as of the date; those in attendance, hearing results and facts discussed resulting in the final denial of his grievance case. Why also did it take over 96 days for the executive board to inform the plaintiff of their decision? Petitioner was a highly recognized and respected employee who had received numerous commendations and awards for his work performance, customer care, professionalism, and high work ethic over his 23 years of dedicated service. He repeats his request as to the real answer why his employer and union of so many years would suddenly act so hostile toward him and with such callousness and intent to pursue termination of his employment.

Petitioner has enclosed several pieces of significant documentation for the Court's review that overwhelmingly supports the Petitioner's case in proving his personal credibility, pride and performance in his work.

REASONS FOR GRANTING THE WRIT

I. OVERVIEW

At this stage of the proceedings, the inquiry is limited to whether the case deserves consideration by the Supreme Court. For matters arising through the federal court system, the Petitioner hereby requests

the court to consider whether there was a conflict on important matters related to ruling. Petitioner also requests the Court to consider the rights of the individuals who are not privy to the benefits of legal system and do not know how and when to utilize it. Has the court of appeals decided an important legal question against the Plaintiff which conflicts with what is right and just in our society today? It is our last hope the Supreme Court will review this case and allow the real facts to be viewed with unbiased eyes for what it really is, "One man standing up against a Goliath." To take a stand against what is wrong and look those chosen few individuals straight in the eyes. Those that are motivated only to look out for themselves and those in their sacred circle's best interests.

The Fourth Circuit Court's decision in *Kamaljit Singh Badwal v. Teamster Union Local No. 922* as represented by Ms. Ferline Buie, et al., No. 08-1911 failed to address these important criteria, which makes the argument in favor of granting certiorari overwhelming.

It is the Petitioner's request that the Fourth Circuit Court, ruling against him, refused to grant him a complete statement of facts for which he was accused by Aero-Link Transportation Services. This in the opinion of the Petitioner has violated his constitutional rights, as a pro se indigent, to have an adequate and comprehensive trial record supplied for the use of pursuing his current appeal.

Mr. Badwal has argued of his denial of both a pre-termination and post-termination due process. These are issues of federal constitutional law. Due process requires "some kind of a hearing" prior to termination. If a full post-termination hearing is available, the pre-termination hearing may be "something less than a full evidentiary hearing" but should serve as an "initial check against mistaken decisions." Who is to say that if persons were resolute to terminate an individual for personal, political, or racial reasons, that they could just "pretend" to have an official "undocumented hearing" to show due process and then merely release the accused from his duties without proper documentation.

Documentation that would show the minutes of the meeting, officials in attendance, and documented criticism brought against him, which had lead to his discharge from his livelihood and main source of income for his family.

The Fourth Circuit Court's conclusion against the Petitioner is a gross misunderstanding. However, Petitioner wishes to expose the illegal tactics taken against him by the Local Teamsters Union and Aero-Link Transportation Services Inc.

II. IMPORTANCE OF THE ISSUE

Do average citizens have any Constitutional Rights unless an attorney represents them?

If those charged with applying the law refuse to do so, there is no law, and all of the efforts of this court are mute for the hardworking blue-collared workers of this country who are the virtual backbone of this great country. Will the court not correct these injustices against pro se litigants because of their pro se status so they may also have a standing in the court with the same constitutional rights?

Therefore, it appears that organizations and their designated officials representing organized labor are granted absolute authority to continue to perform discretionary functions at will and are generally shielded from any liability for civil damages insofar as their conduct does not visibly violate established statutory or constitutional rights of which a reasonable person would have known to be entitled.

This Court should grant certiorari because the Fourth Circuit Court of Appeals' decision to follow in the same footsteps as the previous rulings is an injustice and an unacceptable and devastating tragedy to the common person who seeks only what is right as a Pro Se indigent. I pray that this case can show that the average person may make a stand against union related injustices in the United States Court System with or without being represented by a fraternity of lawyers representing them.

I respectfully refuse to accept the fact that if someone is not part of the fraternity of attorneys or cannot afford them you therefore have no rights in

this country. If you are divested of everything you own, by the system, how can you get justice?

It appears that past courts have accepted every word from the defense as gospel to this point and yet they have not once requested an explanation from Teamsters Union Local Officers as to why they were empowered with such a "Complete lack of responsibility and accountability for their actions" towards the Petitioner. Are they not obligated to perform their duties towards a fellow member of the union in good standing? To advise and instruct as an overseer the rights of the workers who faithfully pay them for their representation and dutiful service?

CONCLUSION

The Petition is worded as if he were asking for a writ of mandamus. It is evident from his prior briefs the Petitioner has raised credible issues that pertain to an alleged constitutional error of the trial court and the Teamsters Union in denying him a full declaration of facts and citations entered as evidence in his termination.

Petitioner previously submitted documentation supporting this claim before the courts. During the Petitioner's grievance process, the Petitioner urges the court to examine unethical and unsubstantiated documentation falsely submitted against him in this case by the Defense.

On these reasons presented today, the Petitioner humbly prays the Court read and grant a writ of certiorari, summarily vacate the order below and remand this case for further proceedings.

Respectfully submitted,

KAMALJIT SINGH BADWAL

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1911

KAMALJIT S. BADWAL,

Plaintiff-Appellant,

v.

FERLINE BUIE, As Representative of Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees Local Union No. 922; TEAMSTER UNION LOCAL NO. 922, representing the Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (1:08-cv-00328-GBL-JFA)

Submitted: December 16, 2008
Decided: December 19, 2008

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Kamaljit S. Badwal, Appellant Pro Se. John Robert Mooney, Mark James Murphy, MOONEY, GREEN, BAKER & SAINDON, P.C., Washington, D.C., for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kamaljit S. Badwal appeals the district court's order dismissing his claim based on the Appellees' failure to arbitrate his employment termination. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Badwal v. Buie*, No. 1:08-cv-00328-GBL-JFA (E.D. Va. Aug. 5, 2008). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

FILED: December 19, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1911
(1:08-cv-00328-GBL-JFA)

KAMALJIT S. BADWAL,

Plaintiff-Appellant

v.

FERLINE BUIE, As Representative of Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees Local Union No. 922; TEAMSTER UNION LOCAL NO. 922, representing the Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees,

Defendants-Appellees.

JUDGMENT

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: January 12, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1911
(1:08-cv-00328-GBL-JFA)

KAMALJIT S. BADWAL,

Plaintiff-Appellant

v.

FERLINE BUIE, As Representative of Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees Local Union No. 922; TEAMSTER UNION LOCAL NO. 922, representing the Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers and Public Transportation Employees,

Defendants-Appellees

MANDATE

The judgment of this Court, entered 12/19/08, takes effect today.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/ *Patricia S. Connor, Clerk*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KAMALJIT S. BADWAL, Plaintiff, v. FERLINE BUIE, *representative of Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers, Allied Workers and Public Transportation Employees Local Union No. 922,* and AUTOMOTIVE, PETROLEUM, CYLINDER AND BOTTLED GAS, CHEMICAL DRIVERS, HELPERS, ALLIED WORKERS AND PUBLIC TRANSPORTATION EMPLOYEES LOCAL UNION NO. 922, Defendants.	)	ACTION NO. 1:08cv328

ORDER

(Filed Aug. 5, 2008)

THIS MATTER is before the Court on Defendants Ferline Buie and Allied Workers and Public Transportation Employees Local Union No. 922's Motion to Dismiss. This case concerns allegations that Defendants Automotive, Petroleum, Cylinder

and Bottled Gas, Chemical Drivers, Helpers, Allied workers and Public Transportation Employees Local Union No. 922 ("Local Union") and Ferline Buie, the Local Union's representative, breached the duty of fair representation by failing to arbitrate Plaintiff Kamaljit S. Badwal's employment termination. Two issues exist before the Court. First, whether Mr. Badwal's action is time barred. Second, if Mr. Badwal's action is not time barred, whether his action should be dismissed for failure to exhaust available internal Union remedies. The Court grants Defendants' Motion to Dismiss because Mr. Badwal initiated this action one month after the six-month limitations period had run. Alternatively, the Court grants Defendants' Motion to Dismiss because, even if Mr. Badwal had filed this lawsuit within the statutory limitations period, he concedes that he intentionally failed to exhaust the available internal Union remedies.

I. BACKGROUND

Aerolink Transportation Services fired Plaintiff Kamaljit Singh Badwal on March 2, 2007, for sleeping on the job. Mr. Badwal had been employed as a cashier/parking booth attendant at National Airport. As an Aerolink employee, Mr. Badwal was a member of a bargaining unit represented by Defendant Automotive, Petroleum, Cylinder and Bottle Gas, Chemical Drivers, Helpers, and Allied Workers and Public Transportation Employees Local Union No. 922, which is affiliated with the International Brotherhood

of Teamsters. Mr. Badwal filed grievances with the Union regarding his termination in April 2007 and May 2007. The Union decided against bringing Mr. Badwal's case to arbitration. Mr. Badwal subsequently retained an attorney, who sent a letter to the Local Union on July 13, 2007, requesting an answer as to why Mr. Badwal's grievance was denied an arbitration. On July 24, 2007, the Local Union responded to the request via letter, stating that Mr. Badwal's history of sleeping on the job prohibited the Local Union from obtaining a favorable arbitration ruling in good faith, and thus, the Local Union's Executive Board had voted against arbitrating the case. Mr. Badwal filed a charge against the Local Union with the National Labor Relations Board ("NLRB") on August 2, 2007. Mr. Badwal received noticed on November 27, 2007, that the charge against the Local Union was dismissed.

On February 29, 2008, Mr. Badwal filed a "Warrant in Debt" in the Fairfax County General District Court seeking $8,768 in damages plus interest and attorney's fees. The Local Union removed the case to this Court and filed a Motion for a More Definitive Statement. The Court granted the Local Union's motion and ordered Mr. Badwal to file an Amended complaint. Mr. Badwal complied. In his Amended Complaint, Mr. Badwal alleges that the Local Union, the exclusive bargaining representative of individuals employed by Aerolink, and Ms. Buie as the Local Union's representative, breached their duty of fair representation in processing his grievances concerning

his employment termination. The Local Union now moves to dismiss Mr. Badwal's Amended Complaint on grounds that the action was initiated outside of the six-month statute of limitations found in Section 10(b) of the National Labor Relations Act ("NLRA"), and that Mr. Badwal failed to exhaust available internal Union remedies as required by the International Brotherhood of Teamster's Constitution.

II. DISCUSSION

A. Standard of Review

A Federal Rule of Civil Procedure 12(b)(6) motion should be granted unless an adequately stated claim is "supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007); *see* FED. R. CIV. P. 12(b)(6). In considering a Rule 12(b)(6) motion, the Court must construe the complaint in the light most favorable to the plaintiff, read the complaint as a whole, and take the facts asserted therein as true. *Myland Labs, Inc. v. Matkazri*, 7 F.3d 1130, 1134 (4th Cir. 1993). In addition to the Complaint, the court may also examine "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007). Conclusory allegations regarding the legal effect of the facts alleged need not be accepted. *See Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995). Because the central purpose of the complaint is to

provide the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests," the plaintiff's legal allegations must be supported by some factual basis sufficient to allow the defendant to prepare a fair response. *Conley v. Gibson,* 355 U.S. 41, 47 (1957).

B. Analysis

The Court grants Defendants' Motion to Dismiss because Mr. Badwal's action is time barred and he failed to exhaust internal Union remedies. In his Amended Complaint, Mr. Badwal claims that the Local Union and its representative, Ms. Buie, breached their duty of fair representation by refusing to arbitrate his employment termination. Section 9(a) of the Labor Management Relations Act permits a Union to act as the exclusive bargaining agent of all Union employees. Because an individual loses his ability to deal directly with his employer in light of the grant of exclusivity afforded unions, the courts have fashioned the duty of fair representation as a check on a union's broad discretion. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967). The duty of fair representation applies to all representational activity performed by unions. *Airline Pilots Ass'n v. O'Neil*, 499 U.S. 65, 67 (1991).

1. Statute of Limitations

The Court grants Defendants' Motion to Dismiss because Mr. Badwal's fair representation claim

against the Local Union and its representative, Ms. Buie, is untimely. The NLRA's six-month statute of limitations applies to breach of fair representation claims. *DelCostello v. Int'l Brotherhood of Teamsters, et. al.*, 462 U.S. 151, 170 (1983) (holding that Section 10(b) of the NLRA is the appropriate limitations period for fair representation lawsuits). Thus, a claim for breach of fair representation must be brought within six months of the alleged violation. The six-month limitations period begins to run when the union member discovers, or should have discovered through the exercise of reasonable diligence, the acts which constitute the alleged violation. *Smith v. Local 7898, United Steelworkers of America*, 834 F.2d 93, 95 (4th Cir. 1987).

It is undisputed that Mr. Badwal received noticed on July 24, 2007, of the Local Union's decision to not arbitrate his termination. (*See* Pl's Mot. To Cont. 1) ("Plaintiff was notified by the Defendant on July 24, 2007 stating that union would not pursue his grievance to arbitration."). Thus, the six-month statute of limitation began to run July 24, 2007. *See Smith*, 834 F.2d at 95. *See also Vadino v. A. Valey Engineers*, 903 F.2d 253, 260 (3d Cir. 1990) ("where an employee sues a union for breach of its duty of fair representation, the limitations period commences when the plaintiff receives notice that the union will proceed no further with the grievance."). In order to have timely initiated his lawsuit, Mr. Badwal would have had to filed this action on or before January 25, 2008. Mr. Badwal, however, did not file his Warrant

in Debt until February 29, 2008 – one month past the expiration of limitations period.

Mr. Badwal asserts that his NLRB complaint against the Union tolled the six-month limitations period. However, the Fourth Circuit has expressly ruled that initiation of such a parallel administrative remedy does not toll the statute of limitations for a fair representation claim. *Kolomick v. United Steelworkers of America, Dist. 8, AFL-CIO*, 762 F.2d 354, 355-56 (4th Cir. 1995) ("A rule tolling the time period within which to file a § 301 claim with NLRB would be contrary to the rationale underlying *DelCostello* and would not effectuate congressional goals."). Mr. Badwal's lawsuit is, therefore, time barred. Accordingly, the Court grants Defendants' Motion to Dismiss.

2. Exhaustion of Internal Union Remedies

Even if Mr. Badwal had timely initiated this action, the action would still be dismissed for failure to exhaust internal Union remedies. Prior to commencing a suit against an employer or the an union for breach of a collective bargaining agreement or the related claim of breach of the duty of fair representation, a union member is required to attempt to exhaust any internal union grievance or arbitration remedies. *See Trent v. Bolger*, 837 F.2d 657 (4th Cir. 1988). Article XIX, section 13 of the International Brotherhood of Teamsters Union's Constitution

specifically provides that a member "who claims to be aggrieved, shall be obligated to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court. . . ." (Defs' Ex. C). Mr. Badwal concedes that he failed to exhaust all of his available internal Union remedies prior to commencing this lawsuit. (*See* Pl's Mot. to Cont. 2). Given Mr. Badwal's concession, the Court also grants Defendants' Motion to Dismiss on the basis that Mr. Badwal failed to exhaust internal Union remedies.

III. CONCLUSION

The Court grants Defendants' Motion to Dismiss because Mr. Badwal's lawsuit is time barred and Mr. Badwal admittedly failed to exhaust the available internal Union remedies. Accordingly, it is hereby

ORDERED that Defendants' Motion to Dismiss is GRANTED.

The Clerk is directed to forward a copy of this Order to Counsel.

Entered this 5th day of August, 2008.

/s/
Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
8/5/08

Minni, Meki

From: Moussa, Amine
Sent: Friday, August 15, 2003 7:50 AM
To: Minni, Meki; Morkunas, Teri
Cc: Minni, Ahmed; Tsehaye, Henok
Subject: RE: Customer Service

Keep it up folks. This act is an extra ordinary evidence why he was recognized as the employee of the quarter. Mr. Badwal has a characteristic of exemplary employee. Please extend our appreciation for doing an excellent job. Also credit goes to those supervisors as well as managers who encourages and recognizes positive behaviors. Keep on rolling folks!

Amine

-----Original Message-----
From: **Minni, Meki**
Sent: Thursday, August 14, 2003 10:04 PM
To: Morkunas, Teri
Cc: Minni, Ahmed; Tsehaye, Henok; Moussa, Amine
Subject: Customer Service

Customer by the name of Mr. Rick Cutrera called to report to us that he had an excellent service when he was exited from Mr. Badwal Kamal booth at lane #33. He said that Mr. Badwal was fast and provided an excellent service.

Thanks
Meki

AeroLink Transportation

EMPLOYEE OF THE MONTH

January 2002

Is presented to

Kamal Badwal

In recognition of your cooperative spirit and contributions to the fulfillment of our company's goals.

Tom Mack April 2002

Executive Committee Member *Date*

General Manager *Date* *Department Manager* *Date*

AeroLink Transportation

EMPLOYEE OF THE MONTH

April 2003

Is presented to

Kamal Badwal

In recognition of your cooperative spirit and contributions to the fulfillment of our company' s goals.

Executive Committee Member — April 2003 — Date

General Manager — April 2003 — Date

Department Manager — april 2003 — Date

AeroLink Transportation

EMPLOYEE OF THE YEAR

January – December 2003

Is presented to

Kamal Badwal

In recognition of your cooperative spirit and contributions to the fulfillment of our company' s goals.

John Mack — Feb 2004

Executive Committee Member — Date

Henk Tsebaje — Feb 2004

General Manager — Date

[signature] — Feb 2004

Department Manager — Date

Certificate of

APPRECIATION

To

Kamal Badwal

In recognition of 22 years of faithful and devoted service to the Parking and Shuttle Bus Concession at Ronald Reagan Washington National Airport

[redacted]

AeroLink General Manager — *July 2005* *Date*

AeroLink Department Manager — *July 2005* *Date*

AeroLink Transportation
Presents the
Valued Idea Award
To

Kamal Balwal

In recognition of your Valued Idea to have a dedicated lane for an AVI exit and improving customer service at Garage A at Ronald Reagan Washington National Airport

General Manager — Date

Parking Operations Manager — Date

Certificate of

APPRECIATION

To

Kamal Badwal

In recognition of 23 years of faithful and devoted service to the Parking and Shuttle Bus Concession at Ronald Reagan Washington National Airport

Henri Tsolaye — June 2006
AeroLink General Manager — *Date*

[signature] — June 2006
AeroLink Department Manager — *Date*